



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA-R10-OAR-2013-0567; FRL-9922-34-Region 10]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants;

Idaho and Oregon: Negative Declarations

AGENCY: Environmental Protection Agency.

ACTION: Final rule; notice of administrative change.

SUMMARY: The Environmental Protection Agency (EPA) is notifying the public that it has received negative declarations from the States of Idaho and Oregon for existing sewage sludge incinerator (SSI) units and from the State of Idaho for existing commercial and industrial solid waste incinerators (CISWI) units. A negative declaration is a certification from a state under the Clean Air Act (CAA) that it has no subject incinerator units under its jurisdiction.

The EPA is also amending the Code of Federal Regulations (CFR) to update the states and source categories for which the EPA has received negative declarations. This is a non-regulatory action.

DATES: This action is effective **[insert the date 30 days after the date of publication in the Federal Register]**.

ADDRESSES: All documents in the docket are listed in the www.regulations.gov index.

Although listed in the index, some information is not publicly available, e.g., confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy. Publicly available docket materials are available either electronically at

www.regulations.gov or in hard copy during normal business hours at the Office of Air, Waste and Toxics, EPA Region 10, 1200 Sixth Avenue, Seattle, Washington, 98101.

FOR FURTHER INFORMATION CONTACT: Heather Valdez at (206) 553-6220, valdez.heather@epa.gov, or the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION: Throughout this document whenever “we,” “us,” or “our” is used, it is intended to refer to the EPA. Information is organized as follows:

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I. Background

Sections 111(d) and 129 of the CAA require submittal of plans to control certain pollutants (designated pollutants) at existing solid waste combustor facilities (designated facilities) whenever standards of performance have been established under section 111(b) for new sources of the same source category and the EPA has established emission guidelines for such existing sources. When designated facilities are located in a state, the state must then develop and submit a plan for the control of the designated pollutant. Subpart B of 40 CFR part 60 establishes procedures to be followed and requirements to be met in the development and submission of state plans for controlling designated pollutants from designated facilities under sections 111(d) and 129 of the CAA. Also, Subpart A of 40 CFR part 62 provides the procedural framework for the submission of these plans.

If a state fails to submit a satisfactory plan, the CAA provides the EPA the authority to

prescribe a plan for regulating the designated pollutants at the designated facilities. The EPA-prescribed plan, also known as a Federal plan, is often delegated to states with designated facilities but no EPA-approved state-specific plan. If no such designated facilities exist within a state's jurisdiction, a state may submit to the EPA a letter of certification to that effect (referred to as a negative declaration) in lieu of a state plan to satisfy the state's obligation. 40 CFR 60.23(b) and 62.06. A negative declaration exempts the state from the requirement to submit a CAA section 111(d)/section 129 plan for that designated pollutant and source category. 40 CFR 60.23(b).

II. Sewage Sludge Incinerators

On March 21, 2011 (76 FR 15372), the EPA promulgated new source performance standards for new SSI units, 40 CFR part 60, subpart LLLL, and emission guidelines for existing SSI units, 40 CFR part 60, subpart MMMM. SSI units are located at wastewater treatment facilities and are designed to combust domestic sewage sludge for the purpose of reducing its volume. 40 CFR 60.5065 and 60.5250. Subpart MMMM requires that state plans address those existing SSI units that commenced construction on or before October 14, 2010, or for which modification was commenced on or before September 21, 2011, with limited exceptions as provided in paragraph 40 CFR 60.5065. 40 CFR 60.5060.

As discussed above, however, if there are no designated facilities in the state, the state may submit a negative declaration in lieu of a state plan. The EPA will provide public notice of receipt of a state's negative declaration with respect to SSI. 40 CFR 60.5030. If any subsequently identified SSI unit for which construction commenced on or before October 14, 2010, is found in a state that had submitted a negative declaration, the Federal plan implementing the emission guidelines for subpart MMMM would automatically apply to that SSI unit until a state plan is

approved. 40 CFR 60.5030.

A. Idaho

On March 11, 2013, the Idaho Department of Environmental Quality (IDEQ) submitted a negative declaration certifying that there are no SSI units subject to the requirements of sections 111(d) and 129 of the CAA operating in the State of Idaho. As provided in 40 CFR 60.5030, the EPA is providing public notice of the IDEQ's negative declaration with respect to SSI. If, at a later date, an existing SSI unit subject to the applicability provisions of subpart MMMM is found in Idaho, the Federal plan implementing the emission guidelines for subpart MMMM would automatically apply to that SSI unit until a state plan for Idaho is approved.¹

B. Oregon

On July 2, 2014, the Oregon Department of Environmental Quality (ODEQ) submitted a negative declaration certifying that there are no SSI units subject to the requirements of sections 111(d) and 129 of the CAA operating in the State of Oregon, including the jurisdiction of the Lane Regional Air Protection Agency. As provided in 40 CFR 60.5030, the EPA is providing public notice of the ODEQ's negative declaration with respect to SSI. If, at a later date, an existing SSI unit subject to the applicability provisions of subpart MMMM is found in Oregon, the Federal plan implementing the emission guidelines for subpart MMMM would automatically apply to that SSI unit until a state plan for Oregon is approved.²

III. Commercial and Industrial Solid Waste Incinerators

On December 1, 2000 (60 FR 75338), the EPA promulgated new source performance

¹ The EPA does not consider the IDEQ's negative declaration to extend to areas on any Indian reservation land or to any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction in Idaho. SSI units in such areas, if any, are subject to the Federal plan implementing the emission guidelines for subpart MMMM.

² The EPA does not consider the ODEQ's negative declaration to extend to areas on any Indian reservation land or to any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction in Oregon. SSI units in such areas, if any, are subject to the Federal plan implementing the emission guidelines for subpart MMMM.

standards for new CISWI units, 40 CFR part 60, subpart CCCC, and emission guidelines for existing CISWI units, 40 CFR part 60, subpart DDDD. After a series of legal challenges, amendments, and reconsiderations, the EPA promulgated the Reconsideration and Final Amendments for CISWI units on February 7, 2013 (78 FR 9112).

A CISWI unit is any distinct operating unit of any commercial or industrial facility that combusts, or has combusted in the preceding six months, any solid waste, as that term is defined in 40 CFR part 241, Solid Wastes Used As Fuels Or Ingredients In Combustion Units. 40 CFR 60.2875. A state plan must address all existing CISWI units that commenced construction on or before June 4, 2010, or for which modification or reconstruction was commenced on or before August 7, 2013, with limited exceptions as provided in paragraph 40 CFR 60.2555. 40 CFR 60.2550.

As discussed above, however, if there are no designated facilities in the state, the state may submit a negative declaration in lieu of a state plan. The EPA will provide public notice of receipt of a state's negative declaration with respect to CISWI. 40 CFR 60.2530. If any subsequently identified existing CISWI unit is found in a state that had submitted a negative declaration, the Federal plan implementing the emission guidelines for subpart DDDD would automatically apply to that CISWI unit until a state plan is approved. 40 CFR 60.2530.

A. Idaho

On April 14, 2014, the Idaho DEQ submitted a negative declaration certifying that there are no CISWI units subject to the requirements of sections 111(d) and 129 of the CAA operating in the State of Idaho. As provided in 40 CFR 60.2530, the EPA is providing public notice of Idaho's negative declaration with respect to CISWI. If, at a later date, an existing CISWI unit subject to the applicability provisions of subpart DDDD is found in Idaho, the Federal plan

implementing the emission guidelines for subpart DDDD will automatically apply to that CISWI unit until a state plan for Idaho is approved.³

IV. Final Action

The States of Idaho and Oregon have determined there are no SSI units subject to the applicability provisions of the SSI emission guidelines at 40 CFR part 60, subpart MMMM, within their respective jurisdictions and have submitted negative declarations to that effect. Idaho has also determined that there are no CISWI units subject to the applicability provisions of 40 CFR part 60, subpart DDDD within the State's jurisdiction and has submitted a negative declaration to that effect. The EPA is providing notice of receipt of these negative declarations. The EPA is also amending 40 CFR part 62, subpart N, to reflect receipt of the negative declaration letters from the IDEQ for the SSI and CISWI emission guidelines and 40 CFR part 62, subpart MM, to reflect the receipt of the negative declaration letter from the ODEQ for the SSI emission guidelines. This is a non-regulatory action.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator's receipt of a negative declaration under 42 U.S.C. 7411 and 7529 does not impose any legal requirements. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

³ The EPA does not consider IDEQ's negative declaration to extend to areas on any Indian reservation land or to any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction in Idaho. CISWI units in such areas, if any, are subject to the Federal plan implementing the emission guidelines for subpart DDDD.

- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because this action does not involve technical standards; and
- does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

These negative declarations are not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the negative declarations do not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will they impose substantial direct costs on tribal governments or preempt tribal law. The Congressional Review Act,

5 U.S.C. 801, *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: January 13, 2014.

Dennis J. McLerran,
Regional Administrator,
Region 10.

40 CFR part 62 is amended as follows:

**PART 62-- APPROVAL AND PROMULGATION OF STATE PLANS FOR
DESIGNATED FACILITIES AND POLLUTANTS**

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart N – IDAHO

2. Subpart N is amended by adding an undesignated center heading and § 62.3140 to read as follows:

Emissions From Existing Sewage Sludge Incineration Units

§ 62.3140 Identification of plan - negative declaration.

Letter from the Idaho Department of Environmental Quality, submitted on March 11, 2013, certifying that there are no existing sewage sludge incineration units subject to 40 CFR part 60, subpart MMMM operating within its jurisdiction.

3. Subpart N is amended by adding an undesignated center heading and § 62.3150 to read as follows:

Emissions From Existing Commercial Industrial Solid Waste Incinerators

§ 62.3150 Identification of plan - negative declaration.

Letter from the Idaho Department of Environmental Quality, submitted on April 14, 2014, certifying that there are no existing commercial industrial solid waste incineration units subject to 40 CFR part 60, subpart DDDD operating within its jurisdiction.

Subpart MM – OREGON

4. Subpart MM is amended by adding an undesignated center heading and §62.9520 to read as follows:

Emissions From Existing Sewage Sludge Incineration Units**§ 62.9520 Identification of plan - negative declaration.**

Letter from the Oregon Department of Environmental Quality, submitted on July 2, 2014, certifying that there are no existing sewage sludge incineration units subject to 40 CFR part 60, subpart MMMM within its jurisdiction or the jurisdiction of the Lane Regional Air Protection Agency.